

Consistent with the restyling of the Federal Rules of Evidence, the language of these rules has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

A summary of the changes to each rule follows.

Utah Rules of Evidence – Style Revision Project

RULE	PROPOSED CHANGE
Rule 101. Scope; Definitions	Restyled, similar to the restyled Federal Rules
Rule 102. Purpose	Identical to the restyled Federal Rule
Rule 103. Rulings on Evidence	Identical to the restyled Federal Rule
Rule 104. Preliminary Questions	Identical to the restyled Federal Rule
Rule 105. Limiting Evidence That Is Not Admissible Against Other Parties or for Other Purposes	Identical to the restyled Federal Rule
Rule 106. Remainder of or Related Writings or Recorded Statements	Identical to the restyled Federal Rule
Rule 201. Judicial Notice	Identical to the restyled Federal Rule
Rule 301. Presumption in General in Civil Actions and Proceedings	Restyled
Rule 302. Applying Federal Law to Presumption in Civil Case	Restyled, similar to Federal Rule
Rule 401. Test for Relevant Evidence	Identical to the restyled Federal Rule
Rule 402. General Admissibility of Relevant Evidence	Restyled, similar to Federal Rule
Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons	Identical to the restyled Federal Rule
Rule 404. Character Evidence; Crimes or Other Acts	Identical to restyled Federal Rule as to (a) and (b); restyled Utah (c)
Rule 405. Methods of Proving Character	Identical to the restyled Federal Rule
Rule 406. Habit; Routine Practice	Identical to the restyled Federal Rule
Rule 407. Subsequent Remedial Measures	Restyled, similar to Federal Rule

Rule 408. Compromise Offers and Negotiations	Identical to the restyled Federal Rule
Rule 409. Payment of Medical and Similar Expenses; Expressions of Apology	(a) is identical to the restyled Federal Rule; (b) has not been restyled and is the language adopted by the Utah Legislature in 2011
Rule 410. Pleas, Plea Discussions, and Related Statements	Identical to the restyled Federal Rule
Rule 411. Liability Insurance	Identical to the restyled Federal Rule
Rule 412. Admissibility of Alleged Victim's Sexual Behavior or Alleged Sexual Predisposition	Restyled
Rule 416. Violation of Traffic Code Not Admissible	Restyled
Rule 501. Privilege in General	Restyled
Rule 502. Husband – Wife	Restyled
Rule 503. Communications to Clergy	Restyled
Rule 504. Lawyer-Client	Restyled
Rule 505. Government Informer	Restyled
Rule 506. Physician and Mental Health Therapist-Patient	Restyled
Rule 507. [Blank]	Renumbered to Rule 510
Rule 508. Environmental Self-Evaluation Privilege	Restyled
Rule 509. News Reporters	Restyled
Rule 510. Miscellaneous Matters	Restyled
Rule 601. General Rules of Competency	Restyled
Rule 602. Lack of Personal Knowledge	Identical to the restyled Federal Rule
Rule 603. Oath of Affirmation	Identical to the restyled Federal Rule
Rule 604. Interpreters	Identical to the restyled Federal Rule
Rule 605. Competency of Judges as Witness	Identical to the restyled Federal Rule
Rule 606. Juror's Competency as a Witness	Restyled, similar to Federal Rule
Rule 607. Who May Impeach	Identical to the restyled Federal Rule
Rule 608. A Witness's Character for Truthfulness or Untruthfulness	(a) and (b) are identical to the restyled Federal Rule; (c) is restyled from the Utah bias provision
Rule 609. Impeachment by Evidence of Conviction of Crime	Identical to the restyled Federal Rule
Rule 610. Religious Beliefs or Opinions	Identical to the restyled Federal Rule
Rule 611. Mode and Order of	Identical to the restyled Federal Rule

Examining Witnesses and Presenting Evidence	
Rule 612. Writing Used to Refresh Memory	Restyled, similar to restyled Federal Rule
Rule 613. Prior Statements of Witnesses	Identical to the restyled Federal Rule
Rule 614. Calling and Interrogation of Witnesses by Court	Identical to the restyled Federal Rule
Rule 615. Exclusion of Witnesses	Restyled
Rule 701. Opinion Testimony by Lay Witnesses	Identical to the restyled Federal Rule
Rule 702. Testimony by Experts	Restyled
Rule 703. Bases of an Expert's Opinion Testimony	Identical to the restyled Federal Rule
Rule 704. Opinion on Ultimate Issue	Identical to the restyled Federal Rule
Rule 705. Disclosing the Facts or Data Underlying an Expert's Opinion	Identical to the restyled Federal Rule
Rule 706. Court-Appointed Experts	Identical to the restyled Federal Rule
Rule 801. Definitions That Apply to This Article; Exclusions from Hearsay	Restyled
Rule 802. The Rule Against Hearsay	Identical to the restyled Federal Rule
Rule 803. Exceptions to the Rule Against Hearsay — Regardless of Whether the Declarant Is Available as a Witness	Identical to the restyled Federal Rule
Rule 804. Exceptions to the Rule Against Hearsay — When the Declarant Is Unavailable as a Witness	Restyled, similar to restyled Federal Rule
Rule 805. Hearsay Within Hearsay	Identical to the restyled Federal Rule
Rule 806. Attacking and Supporting the Declarant's Credibility	Identical to the restyled Federal Rule
Rule 807. Residual Exception	Identical to the restyled Federal Rule
Rule 901. Authenticating or Identifying Evidence	Identical to the restyled Federal Rule
Rule 902. Evidence That Is Self-Authenticating	Identical to the restyled Federal Rule
Rule 903. Subscribing Witness's Testimony	Identical to the restyled Federal Rule
Rule 1001. Definitions That Apply to This Article	Identical to the restyled Federal Rule
Rule 1002. Requirement of the Original	Identical to the restyled Federal Rule

Rule 1003. Admissibility of Duplicates	Identical to the restyled Federal Rule
Rule 1004. Admissibility of Other Evidence of Content	Identical to the restyled Federal Rule
Rule 1005. Copies of Public Records to Prove Content	Identical to the restyled Federal Rule
Rule 1006. Summaries to Prove Content	Identical to the restyled Federal Rule
Rule 1007. Testimony or Statement of a Party to Prove Content	Identical to the restyled Federal Rule
Rule 1008. Functions of the Court and Jury	Identical to the restyled Federal Rule
Rule 1101. Applicability of Rules	Restyled
Rule 1102. Reliable Hearsay in Criminal Preliminary Examinations	Restyled
Rule 1103. Title	No change

ARTICLE I. GENERAL PROVISIONS

Rule 101. Scope; Definitions

- (a) **Scope.** These rules apply to proceedings in Utah courts. The specific courts and proceedings to which the rules apply, along with exceptions, are set out in Rule 1101.
- (b) **Definitions.** In these rules:
- (1) “civil case” means a civil action or proceeding;
 - (2) “criminal case” includes a criminal proceeding;
 - (3) “public office” includes a public agency;
 - (4) “record” includes a memorandum, report, or data compilation;
 - (5) a reference to any kind of written material or any other medium includes electronically stored information.

Rule 102. Purpose

These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.

Rule 103. Rulings on Evidence

- (a) **Preserving a Claim of Error.** A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:

 - (1) if the ruling admits evidence, a party, on the record:
 - (A) timely objects or moves to strike; and
 - (B) states the specific ground, unless it was apparent from the context; or
 - (2) if the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.
- (b) **Not Needing to Renew an Objection or Offer of Proof.** Once the court rules definitively on the record — either before or at trial — a party need not renew an objection or offer of proof to preserve a claim of error for appeal.
- (c) **Court’s Statement About the Ruling; Directing an Offer of Proof.** The court may make any statement about the character or form of the evidence, the objection made, and the ruling. The court may direct that an offer of proof be made in question-and-answer form.
- (d) **Preventing the Jury from Hearing Inadmissible Evidence.** To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.
- (e) **Taking Notice of Plain Error.** A court may take notice of a plain error affecting a substantial right, even if the claim of error was not properly preserved.

Rule 104. Preliminary Questions

- (a) **In General.** The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege.
- (b) **Relevance That Depends on a Fact.** When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later.
- (c) **Conducting a Hearing So That the Jury Cannot Hear It.** The court must conduct any hearing on a preliminary question so that the jury cannot hear it if:

 - (1) the hearing involves the admissibility of a confession;
 - (2) a defendant in a criminal case is a witness and so requests; or
 - (3) justice so requires.
- (d) **Cross-Examining a Defendant in a Criminal Case.** By testifying on a preliminary question, a defendant in a criminal case does not become subject to cross-examination on other issues in the case.
- (e) **Evidence Relevant to Weight and Credibility.** This rule does not limit a party's right to introduce before the jury evidence that is relevant to the weight or credibility of other evidence.

Rule 105. Limiting Evidence That Is Not Admissible Against Other Parties or for Other Purposes

If the court admits evidence that is admissible against a party or for a purpose — but not against another party or for another purpose — the court, on timely request, must restrict the evidence to its proper scope and instruct the jury accordingly.

Rule 106. Remainder of or Related Writings or Recorded Statements

If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part — or any other writing or recorded statement — that in fairness ought to be considered at the same time.

ARTICLE II. JUDICIAL NOTICE

Rule 201. Judicial Notice of Adjudicative Facts

- (a) **Scope.** This rule governs judicial notice of an adjudicative fact only, not a legislative fact.
- (b) **Kinds of Facts That May Be Judicially Noticed.** The court may judicially notice a fact that is not subject to reasonable dispute because it:
 - (1) is generally known within the trial court's territorial jurisdiction; or
 - (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.
- (c) **Taking Notice.** The court:
 - (1) may take judicial notice on its own; or
 - (2) must take judicial notice if a party requests it and the court is supplied with the necessary information.
- (d) **Timing.** The court may take judicial notice at any stage of the proceeding.
- (e) **Opportunity to Be Heard.** On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.
- (f) **Instructing the Jury.** In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

ARTICLE III. PRESUMPTIONS

Rule 301. Presumptions in Civil Cases Generally

In a civil case,

- (a)** unless a statute or these rules provide otherwise, the party against whom a presumption is directed has the burden of proving that the nonexistence of the presumed fact is more probable than its existence.
- (b)** If presumptions are inconsistent, the court determines which presumption applies based upon the weightier considerations of policy. If considerations of policy are of equal weight neither presumption applies.

Rule 302. Applying Federal Law to Presumptions in Civil Cases

In a civil case, federal law governs the effect of a presumption regarding a claim or defense for which federal law supplies the rule of decision.

ARTICLE IV. RELEVANCE AND ITS LIMITS

Rule 401. Test for Relevant Evidence

Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.

Rule 402. General Admissibility of Relevant Evidence

Relevant evidence is admissible unless any of the following provides otherwise:

- the United States Constitution;
- the Utah Constitution;
- a statute; or
- rules applicable in courts of this state.

Irrelevant evidence is not admissible.

Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Rule 404. Character Evidence; Crimes or Other Acts

(a) Character Evidence.

- (1) Prohibited Uses.** Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in conformity with the character or trait.
- (2) Exceptions for a Defendant or Victim in a Criminal Case.** The following exceptions apply in a criminal case:
 - (A)** a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it;
 - (B)** subject to the limitations in Rule 412, a defendant may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted, the prosecutor may:
 - (i)** offer evidence to rebut it; and
 - (ii)** offer evidence of the defendant's same trait; and
 - (C)** in a homicide case, the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.
- (3) Exceptions for a Witness.** Evidence of a witness's character may be admitted under Rules 607, 608, and 609.

(b) Crimes, Wrongs, or Other Acts.

- (1) Prohibited Uses.** Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in conformity with the character.
- (2) Permitted Uses; Notice in a Criminal Case.** This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. On request by a defendant in a criminal case, the prosecutor must:
 - (A)** provide reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial; and

(B) do so before trial, or during trial if the court excuses lack of pretrial notice on good cause shown.

(c) **Evidence of Similar Crimes in Child-Molestation Cases.**

- (1) **Permitted Uses.** In a criminal case in which a defendant is accused of child molestation, the court may admit evidence that the defendant committed any other acts of child molestation to prove a propensity to commit the crime charged.
- (2) **Disclosure.** If the prosecution intends to offer this evidence it shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown.
- (3) For purposes of this rule “child molestation” means an act committed in relation to a child under the age of 14 which would, if committed in this state, be a sexual offense or an attempt to commit a sexual offense.
- (4) Rule 404(c) does not limit the admissibility of evidence otherwise admissible under Rule 404(a), 404(b), or any other rule of evidence.

Rule 405. Methods of Proving Character

- (a) **By Reputation or Opinion.** When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, the court may allow an inquiry into relevant specific instances of the person's conduct.
- (b) **By Specific Instances of Conduct.** When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.

Rule 406. Habit; Routine Practice

Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.

Rule 407. Subsequent Remedial Measures

When measures are taken that would have made an earlier event that caused injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove:

- negligence;
- culpable conduct;
- a defect in a product or its design; or
- a need for a warning or instruction.

But the court may admit this evidence for another purpose, such as impeachment or — if disputed — proving ownership, control, or the feasibility of precautionary measures.

Rule 408. Compromise Offers and Negotiations

(a) **Prohibited Uses.** Evidence of the following is not admissible either to prove or disprove liability for or the validity or amount of a disputed claim:

- (1) furnishing, promising, or offering — or accepting, promising to accept, or offering to accept — a valuable consideration in order to compromise or attempt to compromise the claim; and
- (2) conduct or a statement made in compromise negotiations.

(b) **Exceptions.**

- (1) The court may admit this evidence for another purpose, such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.
- (2) The court is not required to exclude evidence otherwise discoverable merely because it is presented in the course of compromise negotiations.

Rule 409. Payment of medical and similar expenses; expressions of apology

- (a) Evidence of furnishing, promising to pay, or offering to pay medical, hospital, or similar expenses resulting from an injury is not admissible to prove liability for the injury.
- (b) Evidence of unsworn statements, affirmations, gestures, or conduct made to a patient or a person associated with the patient by a defendant that expresses the following is not admissible in a malpractice action against a health care provider or an employee of a health care provider to prove liability for an injury;
 - (1) apology, sympathy, commiseration, condolence, compassion, or general sense of benevolence; or
 - (2) a description of the sequence of events relating to the unanticipated outcome of medical care or the significance of events.

Rule 410. Pleas, Plea Discussions, and Related Statements

- (a) **Prohibited Uses.** In a civil or criminal case, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions:
- (1) a guilty plea that was later withdrawn;
 - (2) a nolo contendere plea;
 - (3) a statement made during a proceeding on either of those pleas under Federal Rule of Criminal Procedure 11 or a comparable state procedure; or
 - (4) a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.
- (b) **Exceptions.** The court may admit a statement described in Rule 410(a)(3) or (4):
- (1) in any proceeding in which another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together; or
 - (2) in a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record, and with counsel present.

Rule 411. Liability Insurance

Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. But the court may admit this evidence for another purpose, such as proving a witness's bias or prejudice or proving agency, ownership, or control.

Rule 412. Admissibility of Victim's Sexual Behavior or Predisposition

- (a) **Prohibited Uses.** The following evidence is not admissible in a criminal proceeding involving alleged sexual misconduct:
- (1) evidence offered to prove that a victim engaged in other sexual behavior; or
 - (2) evidence offered to prove a victim's sexual predisposition.
- (b) **Exceptions.** The court may admit the following evidence if the evidence is otherwise admissible under these rules:
- (1) evidence of specific instances of a victim's sexual behavior, if offered to prove that someone other than the defendant was the source of semen, injury, or other physical evidence;
 - (2) evidence of specific instances of a victim's sexual behavior with respect to the person accused of the sexual misconduct, if offered by the defendant to prove consent or if offered by the prosecutor; or
 - (3) evidence whose exclusion would violate the defendant's constitutional rights.
- (c) **Procedure to Determine Admissibility.**
- (1) **Motion.** If a party intends to offer evidence under Rule 412(b), the party must:
 - (A) file a motion that specifically describes the evidence and states the purpose for which it is to be offered;
 - (B) do so at least 14 days before trial unless the court, for good cause, sets a different time; and
 - (C) serve the motion on all parties.
 - (2) **Notice to the Victim.** The prosecutor shall timely notify the victim or, when appropriate, the victim's guardian or representative.
 - (3) **Hearing.** Before admitting evidence under this rule, the court must conduct an in camera hearing and give the victim and parties a right to attend and be heard. Unless the court orders otherwise, the motion, related materials, and the record of the hearing must be and remain sealed.
- (d) **Definition of "Victim."** In this rule, "victim" includes an alleged victim.

Rule 416. Violation of Traffic Code Not Admissible.

Evidence that a person was convicted of an infraction or a class C misdemeanor under Utah Code Annotated Title 41, Chapter 6a, is not admissible:

- (a) to prove the person acted negligently or otherwise wrongly, or
- (b) to impeach the person's testimony on those issues.

ARTICLE V. PRIVILEGES

Rule 501. Privilege in General

A claim of privilege to withhold evidence is governed by:

- (a) The Constitution of the United States;
- (b) The Constitution of the State of Utah;
- (c) These rules of evidence;
- (d) Other rules adopted by the Utah Supreme Court;
- (e) Decisions of the Utah appellate courts; and
- (f) Existing statutory provisions not in conflict with the above.

Rule 502. Husband - Wife

(a) Definition.

(1) “Confidential communication” means a communication:

(A) made privately by any person to his or her spouse; and

(B) not intended for disclosure to any other person.

(b) Privilege in Criminal Proceedings. In a criminal proceeding, a wife may not be compelled to testify against her husband, nor a husband against his wife.

(c) Statement of the Privilege. An individual has a privilege during the person’s life:

(1) to refuse to testify or to prevent his or her spouse or former spouse from testifying as to any confidential communication made by the individual to the spouse during their marriage; and

(2) to prevent another person from disclosing any such confidential communication.

(d) Who May Claim Privilege. The privilege may be claimed by:

(1) the person who made the confidential communication;

(2) the person’s guardian or conservator;

(3) the non-communicating spouse to whom the confidential communication was made may claim the privilege on behalf of the person who made the confidential communication during the life of the communicating spouse.

(e) Exceptions to the Privilege. No privilege exists under paragraph (c) in the following circumstances:

(1) Spouses as Adverse Parties. In a civil proceeding in which the spouses are adverse parties;

(2) **Furtherance of Crime or Tort.** As to any communication which was made, in whole or in part, to enable or aid anyone to commit; to plan to commit; or to conceal a crime or a tort.

(3) **Spouse Charged with Crime or Tort.** In a proceeding in which one spouse is charged with a crime or a tort against the person or property of:

(A) the other spouse;

(B) the child of either spouse;

(C) a person residing in the household of either spouse; or

(D) a third person if the crime or tort is committed in the course of committing a crime or tort against any of the persons named above.

(4) **Interest of Minor Child.** If the interest of a minor child of either spouse may be adversely affected, the Court may refuse to allow invocation of the privilege.

Rule 503. Communications to Clergy.

(a) Definitions.

(1) "Cleric" means a minister, priest, rabbi, or other similar functionary of a religious organization or an individual reasonably believed to be so by the person consulting that individual.

(2) "Confidential Communication" means a communication:

(A) made privately; and

(B) not intended for further disclosure except to other persons in furtherance of the purpose of the communication.

(b) Statement of the Privilege. A person has a privilege to refuse to disclose, and to prevent another from disclosing, any confidential communication:

(1) made to a cleric in the cleric's religious capacity; and

(2) necessary and proper to enable the cleric to discharge the function of the cleric's office according to the usual course of practice or discipline.

(c) Who May Claim the Privilege. The privilege may be claimed by:

(1) the person who made the confidential communication;

(2) the person's guardian or conservator;

(3) the person's personal representative if the person is deceased; and

(4) the person who was the cleric at the time of the communication on behalf of the communicant.

Rule 504. Lawyer - Client.

(a) Definitions.

- (1) "Client" means a person, public officer, corporation, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer or who consults a lawyer with a view to obtaining professional legal services.
- (2) "Lawyer" means a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.
- (3) "Representative of the lawyer" means a person or entity employed to assist the lawyer in a rendition of professional legal services.
- (4) "Representative of the client" means a person or entity having authority:
 - (A) to obtain professional legal services;
 - (B) to act on advice rendered pursuant to legal services on behalf of the client; or
 - (C) person or entity specifically authorized to communicate with the lawyer concerning a legal matter.
- (5) "Communication" includes:
 - (A) advice given by the lawyer in the course of representing the client; and
 - (B) disclosures of the client and the client's representatives to the lawyer or the lawyer's representatives incidental to the professional relationship.
- (6) "Confidential communication" means a communication not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(b) Statement of the Privilege. A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications:

- (1) made for the purpose of facilitating the rendition of professional legal services to the client; and

- (2) the communications were between:
 - (A) the client and the client's representatives, lawyers, lawyer's representatives, and lawyers representing others in matters of common interest; or
 - (B) among the client's representatives, lawyers, lawyer's representatives, and lawyers representing others in matters of common interest.

(c) **Who May Claim the Privilege.** The privilege may be claimed by:

- (1) the client;
- (2) the client's guardian or conservator;
- (3) the personal representative of a client who is deceased;
- (4) the successor, trustee, or similar representative of a client that was a corporation, association, or other organization, whether or not in existence; and
- (5) the lawyer on behalf of the client.

(d) **Exceptions to the Privilege.** Privilege does not apply in the following circumstances:

- (1) **Furtherance of the Crime or Fraud.** If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;
- (2) **Claimants through Same Deceased Client.** As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction;
- (3) **Breach of Duty by Lawyer or Client.** As to a communication relevant to an issue of breach of duty by the lawyer to the client;
- (4) **Document Attested by Lawyer.** As to a communication relevant to an issue concerning a document to which the lawyer was an attesting witness; or
- (5) **Joint Clients.** As to the communication relevant to a matter of common interest between two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients.

Rule 505. Government Informer.

(a) Definitions.

- (1) "Government" means the government of the United States, of any state, or of any subdivision of any state.
- (2) "Informer" means any person who has furnished information to a law enforcement officer relating to or assisting in an investigation of a possible violation of law.
- (3) "Law enforcement officer" includes
 - (A) peace officers;
 - (B) prosecutors;
 - (C) members of a legislative committee or its staff conducting an investigation; and
 - (D) members of a regulatory agency or its staff conducting an investigation.

(b) Statement of the Privilege. The government has a privilege to refuse to disclose the identity of an informer.

(c) Who May Claim the Privilege. The privilege may be claimed by counsel for the government or in the absence of counsel by another appropriate representative. The privilege may be claimed regardless of whether the information was furnished to an officer of the government claiming the privilege.

(d) Exceptions: No privilege exists under paragraph (b) in the following circumstances:

- (1) **Voluntary Disclosure.** If the identity of the informer or the informer's interest in the subject matter of the informer's communication has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informer's own action.
- (2) **Informer as Witness.** The informer appears as a witness for the government.

(e) Testimony on Merits.

- (1) **In General.** If it appears from the evidence in the case or from another showing by a

party that an informer may be able to give testimony necessary to a fair determination of the issue of guilt or innocence in a criminal case or of a material issue on the merits of a civil case, whether or not the government is a party, and the government invokes a privilege, the judge may give the government an opportunity to show in camera facts relevant to determining whether the informer can, in fact, supply the testimony. The judge may make such orders regarding the procedures to be followed as are consistent with the spirit and purpose of this rule.

- (2) **Effect of Invoking Privilege.** If the judge finds there is reasonable probability that the informer can give the testimony, and the government elects not to disclose the informer's identity, the judge, on motion of the defendant in a criminal case, shall dismiss the charges to which the testimony would relate. The judge may dismiss the charges on the judge's own motion. In a civil case, the judge may make any order that justice requires.
- (3) **Record for Appeal.** Evidence submitted to the judge may be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the government.
- (4) **Right to be Present.** All counsel and parties shall be permitted to be present at every stage of the proceedings under this subparagraph, except a showing in camera at which no counsel or party shall be permitted to be present.

(f) **Legality of Obtained Evidence.**

- (1) **Requirements for Disclosure.** The judge may require the disclosure of the identity of an informer if
 - (A) information from the informer is relied upon to establish the legality of the means by which evidence was obtained; and
 - (B) the party attacking the legality of obtaining the evidence makes a substantial preliminary showing that the law enforcement officer intentionally, knowingly or with reckless disregard for truth falsely swore that the information was received from an informer reasonably believed to be reliable or credible and that probable cause does not exist absent the information furnished by the informer.
- (2) **Process of Disclosure.** The judge shall, at the request of the government, direct that the disclosure be made in camera. All counsel and parties concerned with the issue of legality shall be permitted to be present at every stage of the proceeding under this subparagraph, except at a disclosure in camera, at which no counsel or parties shall be permitted to be present. If disclosure of the identity of the informer is made in camera, the record thereof shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be

revealed without consent of the government.

Rule 506. Physician and Mental Health Therapist-Patient.

(a) Definitions.

- (1)** "Patient" means a person who consults or is examined or interviewed by a physician or mental health therapist.
- (2)** "Physician" means a person licensed, or reasonably believed by the patient to be licensed, to practice medicine in any state.
- (3)** "Mental health therapist" means a person who
 - (A)** is or is reasonably believed by the patient to be licensed or certified in any state as a physician, psychologist, clinical or certified social worker, marriage and family therapist, advanced practice registered nurse designated as a registered psychiatric mental health nurse specialist, or professional counselor; and
 - (B)** is engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction.

(b) Statement of the Privilege. A patient has a privilege, during the patient's life, to refuse to disclose and to prevent any other person from disclosing information that is communicated in confidence to a physician or mental health therapist for the purpose of diagnosing or treating the patient. The privilege applies to:

- (1)** diagnoses made, treatment provided, or advice given by a physician or mental health therapist;
- (2)** information obtained by examination of the patient; and
- (3)** information transmitted among a patient, a physician or mental health therapist, and other persons who are participating in the diagnosis or treatment under the direction of the physician or mental health therapist. Such other persons include guardians or members of the patient's family who are present to further the interest of the patient because they are reasonably necessary for the transmission of the communications, or participation in the diagnosis and treatment under the direction of the physician or mental health therapist.

(c) Who May Claim the Privilege. The privilege may be claimed by the patient, or the guardian or conservator of the patient. The person who was the physician or mental health

therapist at the time of the communication is presumed to have authority during the life of the patient to claim the privilege on behalf of the patient.

(d) Exceptions. No privilege exists under paragraph (b) in the following circumstances:

(1) Condition as Element of Claim or Defense. For communications relevant to an issue of the physical, mental, or emotional condition of the patient:

(A) in any proceeding in which that condition is an element of any claim or defense, or

(B) after the patient's death, in any proceedings in which any party relies upon the condition as an element of the claim or defense;

(2) Hospitalization for Mental Illness. For communications relevant to an issue in proceedings to hospitalize the patient for mental illness, if the mental health therapist in the course of diagnosis or treatment has determined that the patient is in need of hospitalization; and

(3) Court Ordered Examination. For communications made in the course of, and pertinent to the purpose of, a court-ordered examination of the physical, mental, or emotional condition of a patient, whether a party or witness, unless the court in ordering the examination specifies otherwise.

Rule 507. [Blank]

The rule for Micellaneous Matters is renumbered to Rule 510. Rule 507 will be held blank as a place saver for a future rule of evidence.

Rule 508. Environmental Self-Evaluation Privilege.

(a) Definitions.

- (1) "Administrative proceeding" means an adjudicatory proceeding conducted by the department or other government entity with authority to enforce any environmental law, including any notice of violation proceeding, any department proceeding listed in Utah Code § 19-1-305, or any proceeding conducted pursuant to Title 63G, Chapter 4, Utah Code, Utah Administrative Procedures Act.
- (2) "Department" means the Department of Environmental Quality.
- (3) "Environmental audit report" means any document, information, report, finding, communication, note drawing, graph, chart, photograph, survey, suggestion, or opinion, whether in preliminary, draft, or final form, prepared as the result of or in response to an environmental self-evaluation.
- (4) "Environmental law" means any requirement contained in Title 19 Utah Code, or in rules made under Title 19, Utah Code, or in any rules, orders, permits, licenses, or closure plans issued or approved by the department, or in any other provision or ordinance addressing protection of the environment.
- (5) "Environmental self-evaluation" means a self-initiated assessment, audit, or review, not otherwise expressly required by an environmental law, that is performed to determine whether a person is in compliance with environmental laws. A person may perform an environmental self-evaluation through the use of employees or the use of outside consultants.
- (6) "In camera review" means a confidential review in which only the court has access to the privileged information.
- (7) "Judicial proceeding" means a civil proceeding.

(b) Statement of the Privilege.

- (1) A person for whom an environmental self-evaluation is conducted or for whom an environmental audit report is prepared has a privilege to refuse to disclose, and prevent any other person from disclosing, an environmental audit report.
- (2) The existence of an environmental audit report, but not its content, is subject to discovery but is not admissible in an administrative or judicial proceeding.

(3) Use of an environmental audit report in a criminal proceeding does not waive or eliminate the privilege in an administrative or civil proceeding.

(c) **Who May Claim the Privilege.** The privilege may be claimed by

(1) the person for whom an environmental self-evaluation is conducted or for whom an environmental audit report is prepared; and

(2) that person's guardian, conservator, personal representative, trustee, or successor in interest.

(d) **Exceptions to the Privilege.** The privilege does not apply in the following circumstances:

(1) **Waiver.**

(A) If the person for whom the audit report was prepared expressly waives the privilege;

(B) Regardless of who prepared the environmental audit report, only the person for whom the environmental audit report was prepared can waive the environmental self-evaluation privilege;

(C) If that person is a corporation, company, or other business entity, the power to waive the privilege is limited to the officers and directors who have the requisite management authority to act for the entity.

(2) **Fraud.** If the privilege is being asserted for a fraudulent purpose;

(3) **Avoidance.** If the environmental audit report was prepared to avoid disclosure of information in a compliance investigation or proceeding that was already underway and known to the person asserting the privilege;

(4) **Danger to Public Health or Environment.** If the information contained in the environmental audit report must be disclosed to avoid a clear and impending danger to public health or the environment outside of the facility property;

(5) **Failure to Address Noncompliance.**

(A) If the environmental audit report conclusively shows that the person for whom the environmental audit report was prepared is not or was not in compliance with an environmental law and after the environmental audit report the person did not initiate appropriate efforts to achieve compliance with the environmental law within a reasonable amount of time.

(B) If an environmental audit report shows noncompliance with more than one environmental law, or if the noncompliance will require substantial resources to achieve compliance, and the person does not demonstrate that appropriate efforts to achieve compliance were or are being taken by instituting a comprehensive program that establishes a phased schedule of actions to be taken to bring the person into compliance within a reasonable amount of time;

(6) **Required by Law.** If the document or information is specifically required to be available or furnished to a regulatory agency by any environmental law or any other law or rule;

(7) **Obtained by Department.** If the information is obtained by the department through observation, sampling, or monitoring;

(8) **Independent Source.** If the information is obtained through any source independent of the voluntary environmental self-evaluation.

(e) **In Camera Review.**

(1) The person seeking disclosure of an environmental audit report shall request an in camera review of the audit report by a court of record.

(2) During in camera review, the party seeking disclosure of the environmental audit report may not have access to the environmental audit report.

(3) (A) If the court of record determines that part of an environmental audit report is not privileged, the court shall order the disclosure of the non-privileged portions of the environmental audit report.

(B) The privileged portions of the environmental audit report may not be disclosed.

(f) **Burden of Proof.**

(1) The person asserting the environmental self-evaluation privilege has the burden of establishing a prima facie case of privilege.

(2) The person seeking disclosure of an environmental audit report has the burden of proving that the environmental audit report is not privileged.

(g) **Other Privileges Not Affected.** Nothing in this rule:

(1) limits, waives, or abrogates the scope or nature of any other statutory or common law privilege; or

(2) limits, waives, or abrogates the department's authority to obtain or use documents or

information that the department is required to have under federal law to obtain delegation of a federal program.

- (h) Scope of Rule.** This rule applies to all administrative and judicial proceedings commenced on or after March 21, 1995.

Rule 509. News Reporters.

(a) Definitions.

- (1)** "News reporter" means a publisher, editor, reporter or other similar person gathering information for the primary purpose of disseminating news to the public and any newspaper, magazine, or other periodical publication, press association or wire service, radio station, television station, satellite broadcast, cable system or other organization with whom that person is connected.
- (2)** "Confidential source information" means the name or any other information likely to lead directly to the disclosure of the identity of a person who gives information to a news reporter with a reasonable expectation of confidentiality.
- (3)** "Confidential unpublished news information" means information, other than confidential source information, that is gathered by a news reporter on condition of confidentiality. This includes notes, outtakes, photographs, tapes or other data that are maintained by the news reporter or by the organization or entity on whose behalf the reporter was acting to the extent such records include information that was provided on condition of confidentiality.
- (4)** "Other unpublished news information" means information, other than confidential unpublished news information, that is gathered by a news reporter. This includes notes, outtakes, photographs, tapes or other data that are maintained by the news reporter or by the organization or entity on whose behalf the reporter was acting.

(b) Statement of the Privilege for Confidential Source Information. A news reporter or confidential source has a privilege to refuse to disclose — and to prevent any other person from disclosing — confidential source information, unless the person seeking the information demonstrates by clear and convincing evidence that disclosure is necessary to prevent substantial injury or death.

(c) Statement of the Privilege for Confidential Unpublished News Information. A news reporter has a privilege to refuse to disclose confidential unpublished news information, unless the person seeking the information demonstrates a need for that information that substantially outweighs the interest of a continued free flow of information to news reporters.

(d) Statement of the Privilege for Other Unpublished News Information. A news reporter has a privilege to refuse to disclose other unpublished news information if the person

claiming the privilege demonstrates that the interest of a continued free flow of information to news reporters outweighs the need for disclosure.

- (e) **Who May Claim.** The privileges may be claimed, as applicable, by the news reporter, the organization or entity on whose behalf the news reporter was acting, the confidential source, the news reporter's or confidential source's guardian or conservator or the personal representative of a deceased news reporter or confidential source.
- (f) **In Camera Review.** If the court makes an initial determination that information which is claimed to be privileged under this rule should be disclosed, the court shall conduct an in camera review of that information before making a final determination requiring disclosure.

Rule 510. Miscellaneous Matters.

- (a) **Waiver of Privilege.** A person who holds a privilege under these rules waives the privilege if the person or a previous holder of the privilege:
- (1) voluntarily discloses or consents to the disclosure of any significant part of the matter or communication, or
 - (2) fails to take reasonable precautions against inadvertent disclosure.
- This privilege is not waived if the disclosure is itself a privileged communication.
- (b) **Inadmissibility of Disclosed Information.** Evidence of a statement or other disclosure of privileged matter is not admissible against the holder of the privilege if disclosure was compelled erroneously or made without opportunity to claim the privilege.
- (c) **Comment or Inference Not Permitted.** The claim of privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel. No inference may be drawn from any claim of privilege.
- (d) **Claiming Privilege Without the Jury's Knowledge.** To the extent practicable, jury cases shall be conducted to allow claims of privilege to be made without the jury's knowledge.
- (e) **Jury Instruction.** Upon request, any party against whom the jury might draw an adverse inference from the claim of privilege is entitled to a jury instruction that no inference may be drawn from that claim of privilege.
- (f) **Privilege Against Self-Incrimination in Civil Cases.** In a civil case, the provisions of paragraph (c)-(e) do not apply when the privilege against self-incrimination has been invoked.

ARTICLE VI. WITNESSES

Rule 601. General Rules of Competency

- (a) Every person is competent to be a witness unless these rules provide otherwise.
- (b) In an action for the declarant's wrongful death, a statement of the declarant is admissible against the plaintiff notwithstanding the hearsay rule.
- (c) In an action against the declarant's estate, the declarant's statement is admissible notwithstanding the hearsay rule if it was made at a time when the matter had been recently perceived by the declarant and while the declarant's recollection was clear unless it was made under circumstances indicating its lack of trustworthiness.

Rule 602. Need for Personal Knowledge

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.

Rule 603. Oath or Affirmation to Testify Truthfully

Before testifying, a witness must give an oath or affirmation to testify truthfully. It must be in a form designed to impress that duty on the witness's conscience.

Rule 604. Interpreter

An interpreter must be qualified and must give an oath or affirmation to make a true translation.

Rule 605. Judge's Competency as a Witness

The presiding judge may not testify as a witness at the trial. A party need not object to preserve the issue.

Rule 606. Juror's Competency as a Witness

- (a) **At the Trial.** A juror may not testify as a witness before the other jurors at the trial. If a juror is called to testify, the court must give a party an opportunity to object outside the jury's presence.
- (b) **During an Inquiry into the Validity of a Verdict or Indictment.**
- (1) **Prohibited Testimony or Other Evidence.** During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.
- (2) **Exceptions.** A juror may testify about whether:
- (A) extraneous prejudicial information was improperly brought to the jury's attention; or
- (B) an outside influence was improperly brought to bear on any juror.

Rule 607. Who May Impeach a Witness

Any party, including the party that called the witness, may attack the witness's credibility.

Rule 608. A Witness's Character for Truthfulness or Untruthfulness

- (a) **Reputation or Opinion Evidence.** A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.
- (b) **Specific Instances of Conduct.** Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:

- (1) the witness; or
- (2) another witness whose character the witness being cross-examined has testified about.

By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness.

- (c) **Evidence of Bias.** Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by other evidence.

Rule 609. Impeachment by Evidence of a Criminal Conviction

(a) **In General.** The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:

- (1) for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:
 - (A) must be admitted, subject to Rule 403, in a civil case or in a criminal case in which the witness is not a defendant; and
 - (B) must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant; and
- (2) for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving — or the witness's admitting — a dishonest act or false statement.

(b) **Limit on Using the Evidence After 10 Years.** This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if:

its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and

the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

(c) **Effect of a Pardon, Annulment, or Certificate of Rehabilitation.** Evidence of a conviction is not admissible if:

- (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death or by imprisonment for more than one year; or

(2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) **Juvenile Adjudications.** Evidence of a juvenile adjudication is admissible under this rule only if:

(1) it is offered in a criminal case;

(2) the adjudication was of a witness other than the defendant;

(3) an adult's conviction for that offense would be admissible to attack the adult's credibility; and

(4) admitting the evidence is necessary to fairly determine guilt or innocence.

(e) **Pendency of an Appeal.** A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible.

Rule 610. Religious Beliefs or Opinions

Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.

Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence

- (a) **Control by the Court; Purposes.** The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:
- (1) make those procedures effective for determining the truth;
 - (2) avoid wasting time; and
 - (3) protect witnesses from harassment or undue embarrassment.
- (b) **Scope of Cross-Examination.** Cross-examination should not go beyond the subject matter of the direct examination and matters affecting the witness's credibility. The court may allow inquiry into additional matters as if on direct examination.
- (c) **Leading Questions.** Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions:
- (1) on cross-examination; and
 - (2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

Rule 612. Writing Used to Refresh a Witness's Memory

- (a) **Scope.** This rule gives an adverse party certain options when a witness uses a writing to refresh memory:
- (1) while testifying; or
 - (2) before testifying, if the court decides that justice requires the party to have those options.
- (b) **Adverse Party's Options; Deleting Unrelated Matter.** An adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony. If the producing party claims that the writing includes unrelated matter, the court must examine the writing in camera, delete any unrelated portion, and order that the rest be delivered to the adverse party. Any portion deleted over objection must be preserved for the record.
- (c) **Failure to Produce or Deliver the Writing.** If a writing is not produced or is not delivered as ordered, the court may issue any appropriate order. But if the prosecution does not comply in a criminal case, the court must strike the witness's testimony or — if justice so requires — declare a mistrial.

Rule 613. Witness's Prior Statement

- (a) **Showing or Disclosing the Statement During Examination.** When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney.
- (b) **Extrinsic Evidence of a Prior Inconsistent Statement.** Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (b) does not apply to an opposing party's statement under Rule 801(d)(2).

Rule 614. Court's Calling or Examining a Witness

- (a) **Calling.** The court may call a witness on its own or at a party's request. Each party is entitled to cross-examine the witness.
- (b) **Examining.** The court may examine a witness regardless of who calls the witness.
- (c) **Objections.** A party may object to the court's calling or examining a witness either at that time or at the next opportunity when the jury is not present.

Rule 615. Excluding Witnesses

At a party's request, the court must order witnesses excluded so that they cannot hear other witnesses' testimony. Or the court may do so on its own. But this rule does not authorize excluding:

- (a) a party who is a natural person;
- (b) an officer or employee of a party that is not a natural person, after being designated as the party's representative by its attorney;
- (c) a person whose presence a party shows to be essential to presenting the party's claim or defense;
- (d) a victim in a criminal or juvenile delinquency proceeding where the prosecutor agrees with the victim's presence;
- (e) a victim counselor while the victim is present unless the defendant establishes that the counselor is a material witness in that criminal or juvenile delinquency proceeding; or
- (f) a person authorized by statute to be present.

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

Rule 701. Opinion Testimony by Lay Witnesses

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

- (a) rationally based on the witness's perception;

- (b)** helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
- (c)** not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Rule 702. Testimony by Experts

- (a)** Subject to the limitations in paragraph (b), a witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.
- (b)** Scientific, technical, or other specialized knowledge may serve as the basis for expert testimony only if there is a threshold showing that the principles or methods that are underlying in the testimony

 - (1)** are reliable,
 - (2)** are based upon sufficient facts or data, and
 - (3)** have been reliably applied to the facts.
- (c)** The threshold showing required by paragraph (b) is satisfied if the underlying principles or methods, including the sufficiency of facts or data and the manner of their application to the facts of the case, are generally accepted by the relevant expert community.

Rule 703. Bases of an Expert's Opinion Testimony

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

Rule 704. Opinion on Ultimate Issue.

- (a) **In General — Not Automatically Objectionable.** An opinion is not objectionable just because it embraces an ultimate issue.

- (b) **Exception.** In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.

Rule 705. Disclosing the Facts or Data Underlying an Expert's Opinion

Unless the court orders otherwise, an expert may state an opinion — and give the reasons for it — without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination.

Rule 706. Court-Appointed Experts

- (a) **Appointment Process.** On a party's motion or on its own, the court may order the parties to show cause why expert witnesses should not be appointed and may ask the parties to submit nominations. The court may appoint any expert that the parties agree on and any of its own choosing. But the court may only appoint someone who consents to act.
- (b) **Expert's Role.** The court must inform the expert of the expert's duties. The court may do so in writing and have a copy filed with the clerk or may do so orally at a conference in which the parties have an opportunity to participate. The expert:
- (1) must advise the parties of any findings the expert makes;
 - (2) may be deposed by any party;
 - (3) may be called to testify by the court or any party; and
 - (4) may be cross-examined by any party, including the party that called the expert.
- (c) **Compensation.** The expert is entitled to a reasonable compensation, as set by the court. The compensation is payable as follows:
- (1) in a criminal case or in a civil case involving just compensation under the Fifth Amendment, from any funds that are provided by law; and
 - (2) in any other civil case, by the parties in the proportion and at the time that the court directs — and the compensation is then charged like other costs.

ARTICLE VIII. HEARSAY

Rule 801. Definitions That Apply to This Article; Exclusions from Hearsay

- (a) **Statement.** “Statement” means a person’s oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.
- (b) **Declarant.** “Declarant” means the person who made the statement.
- (c) **Hearsay.** “Hearsay” means a statement that:
- (1) the declarant does not make while testifying at the current trial or hearing; and
 - (2) a party offers in evidence to prove the truth of the matter asserted in the statement.
- (d) **Statements That Are Not Hearsay.** A statement that meets the following conditions is not hearsay:
- (1) **A Declarant-Witness’s Prior Statement.** The declarant testifies and is subject to cross-examination about a prior statement, and the statement:
 - (A) is inconsistent with the declarant's testimony or the declarant denies having made the statement or has forgotten, or
 - (B) is consistent with the declarant's testimony and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or
 - (C) identifies a person as someone the declarant perceived earlier.
 - (2) **An Opposing Party’s Statement.** The statement is offered against an opposing party and:
 - (A) was made by the party in an individual or representative capacity;

- (B)** is one the party manifested that it adopted or believed to be true;
- (C)** was made by a person whom the party authorized to make a statement on the subject;
- (D)** was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or
- (E)** was made by the party's coconspirator during and in furtherance of the conspiracy.

Rule 802. The Rule Against Hearsay

Hearsay is not admissible except as provided by law or by these rules.

Rule 803. Exceptions to the Rule Against Hearsay — Regardless of Whether the Declarant Is Available as a Witness

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

- (1) **Present Sense Impression.** A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.
- (2) **Excited Utterance.** A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.
- (3) **Then-Existing Mental, Emotional, or Physical Condition.** A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.
- (4) **Statement Made for Medical Diagnosis or Treatment.** A statement that:
 - (A) is made for — and is reasonably pertinent to — medical diagnosis or treatment; and
 - (B) describes medical history; past or present symptoms or sensations; their inception; or their general cause.
- (5) **Recorded Recollection.** A record that:
 - (A) is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;
 - (B) was made or adopted by the witness when the matter was fresh in the witness's memory; and
 - (C) accurately reflects the witness's knowledge.

If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.

(6) Records of a Regularly Conducted Activity. A record of an act, event, condition, opinion, or diagnosis if:

(A) the record was made at or near the time by — or from information transmitted by — someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and

(E) neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.

(7) Absence of a Record of a Regularly Conducted Activity. Evidence that a matter is not included in a record described in paragraph (6) if:

(A) the evidence is admitted to prove that the matter did not occur or exist;

(B) a record was regularly kept for a matter of that kind; and

(C) neither the possible source of the information nor other circumstances indicate a lack of trustworthiness.

(8) Public Records. A record or statement of a public office if:

(A) it sets out:

(i) the office's activities;

(ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or

(iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and

(B) neither the source of information nor other circumstances indicate a lack of trustworthiness.

(9) **Public Records of Vital Statistics.** A record of a birth, death, or marriage, if reported to a public office in accordance with a legal duty.

(10) **Absence of a Public Record.** Testimony — or a certification under Rule 902 — that a diligent search failed to disclose a public record or statement if the testimony or certification is admitted to prove that:

(A) the record or statement does not exist; or

(B) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.

(11) **Records of Religious Organizations Concerning Personal or Family History.** A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) **Certificates of Marriage, Baptism, and Similar Ceremonies.** A statement of fact contained in a certificate:

(A) made by a person who is authorized by a religious organization or by law to perform the act certified;

(B) attesting that the person performed a marriage or similar ceremony or administered a sacrament; and

(C) purporting to have been issued at the time of the act or within a reasonable time after it.

(13) **Family Records.** A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker.

(14) **Records of Documents That Affect an Interest in Property.** The record of a

document that purports to establish or affect an interest in property if:

- (A) the record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it;
- (B) the record is kept in a public office; and
- (C) a statute authorizes recording documents of that kind in that office.

(15) Statements in Documents That Affect an Interest in Property. A statement contained in a document that purports to establish or affect an interest in property if the matter stated was relevant to the document's purpose — unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document.

(16) Statements in Ancient Documents. A statement in a document that is at least 20 years old and whose authenticity is established.

(17) Market Reports and Similar Commercial Publications. Market quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations.

(18) Statements in Learned Treatises, Periodicals, or Pamphlets. A statement contained in a treatise, periodical, or pamphlet if:

- (A) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and
- (B) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

If admitted, the statement may be read into evidence but not received as an exhibit.

(19) Reputation Concerning Personal or Family History. A reputation among a person's family by blood, adoption, or marriage — or among a person's associates or in the community — concerning the person's birth, adoption, legitimacy, ancestry, marriage, divorce, death, relationship by blood, adoption, or marriage, or similar facts of personal or family history.

(20) Reputation Concerning Boundaries or General History. A reputation in a community — arising before the controversy — concerning boundaries of land in the community or customs that affect the land, or concerning general historical events important to that community, state, or nation.

(21) Reputation Concerning Character. A reputation among a person's associates or in the community concerning the person's character.

(22) Judgment of a Previous Conviction. Evidence of a final judgment of conviction if:

(A) the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;

(B) the conviction was for a crime punishable by death or by imprisonment for more than a year;

(C) the evidence is admitted to prove any fact essential to the judgment; and

(D) when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.

The pendency of an appeal may be shown but does not affect admissibility.

(23) Judgments Involving Personal, Family, or General History or a Boundary. A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter:

(A) was essential to the judgment; and

(B) could be proved by evidence of reputation.

(24) [Other exceptions.] [Transferred to Rule 807.]

Rule 804. Exceptions to the Rule Against Hearsay – When the Declarant is

Unavailable as a Witness

(a) **Criteria for Being Unavailable.** A declarant is considered to be unavailable as a witness if the declarant:

- (1) is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;
- (2) refuses to testify about the subject matter despite a court order to do so;
- (3) testifies to not remembering the subject matter;
- (4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or
- (5) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure the declarant's attendance.

But this subdivision (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

(b) **The Exceptions.** The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

- (1) **Former Testimony.** Testimony that:

(A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and

(B) is now offered against a party who had — or, in a civil case, whose predecessor in interest had — an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

(2) **Statement Under the Belief of Imminent Death.** In a civil or criminal case, a statement made by the declarant while believing the declarant's death to be imminent, if the judge finds it was made in good faith.

(3) **Statement Against Interest.** A statement that:

(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

(B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

(4) **Statement of Personal or Family History.** A statement about:

(A) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

(B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.



Rule 805. Hearsay Within Hearsay

Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.

Rule 806. Attacking and Supporting the Declarant's Credibility

When a hearsay statement — or a statement described in Rule 801(d)(2)(C), (D), or (E) — has been admitted in evidence, the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness. The court may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination.

Rule 807. Residual Exception

- (a) **In General.** Under the following circumstances, a hearsay statement is not excluded by the rule against hearsay even if the statement is not specifically covered by a hearsay exception in Rule 803 or 804:
- (1) the statement has equivalent circumstantial guarantees of trustworthiness;
 - (2) it is offered as evidence of a material fact;
 - (3) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; and
 - (4) admitting it will best serve the purposes of these rules and the interests of justice.
- (b) **Notice.** The statement is admissible only if, before the trial or hearing, the proponent gives an adverse party reasonable notice of the intent to offer the statement and its particulars, including the declarant's name and address, so that the party has a fair opportunity to meet it.

ARTICLE IX. AUTHENTICATION AND IDENTIFICATION

Rule 901. Authenticating or Identifying Evidence

- (a) **In General.** To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.
- (b) **Examples.** The following are examples only — not a complete list — of evidence that satisfies the requirement:
- (1) **Testimony of a Witness with Knowledge.** Testimony that an item is what it is claimed to be.
 - (2) **Nonexpert Opinion About Handwriting.** A nonexpert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.
 - (3) **Comparison by an Expert Witness or the Trier of Fact.** A comparison with an authenticated specimen by an expert witness or the trier of fact.
 - (4) **Distinctive Characteristics and the Like.** The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.
 - (5) **Opinion About a Voice.** An opinion identifying a person's voice — whether heard firsthand or through mechanical or electronic transmission or recording — based on hearing the voice at any time under circumstances that connect it with the alleged speaker.

(6) Evidence About a Telephone Conversation. For a telephone conversation, evidence that a call was made to the number assigned at the time to:

(A) a particular person, if circumstances, including self-identification, show that the person answering was the one called; or

(B) a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.

(7) Evidence About Public Records. Evidence that:

(A) a document was recorded or filed in a public office as authorized by law; or

(B) a purported public record or statement is from the office where items of this kind are kept.

(8) Evidence About Ancient Documents or Data Compilations. For a document or data compilation, evidence that it:

(A) is in a condition that creates no suspicion about its authenticity;

(B) was in a place where, if authentic, it would likely be; and

(C) is at least 20 years old when offered.

(9) Evidence About a Process or System. Evidence describing a process or system and showing that it produces an accurate result.

(10) Methods Provided by a Statute or Rule. Any method of authentication or identification allowed by court rule or statute of this state.

Rule 902. Evidence That Is Self-Authenticating

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

- (1) Domestic Public Documents That Are Sealed and Signed.** A document that bears:

 - (A)** a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and
 - (B)** a signature purporting to be an execution or attestation.
- (2) Domestic Public Documents That Are Not Sealed But Are Signed and Certified.** A document that bears no seal if:

 - (A)** it bears the signature of an officer or employee of an entity named in Rule 902(1)(A); and
 - (B)** another public officer who has a seal and official duties within that same entity certifies under seal — or its equivalent — that the signer has the official capacity and that the signature is genuine.
- (3) Foreign Public Documents.** A document that purports to be signed or attested by a person who is authorized by a foreign country’s law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester — or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document’s authenticity and accuracy, the court may, for good cause, either:

- (A) order that it be treated as presumptively authentic without final certification; or
 - (B) allow it to be evidenced by an attested summary with or without final certification.
- (4) **Certified Copies of Public Records.** A copy of an official record — or a copy of a document that was recorded or filed in a public office as authorized by law — if the copy is certified as correct by:
- (A) the custodian or another person authorized to make the certification; or
 - (B) a certificate that complies with Rule 902(1), (2), or (3), or any law of the United States or of this state.
- (5) **Official publications.** Books, pamphlet, or other publication purporting to be issued by public authority.
- (6) **Newspapers and Periodicals.** Printed material purporting to be a newspaper or periodical.
- (7) **Trade Inscriptions and the Like.** An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.
- (8) **Acknowledged Documents.** A document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.
- (9) **Commercial Paper and Related Documents.** Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.
- (10) **Presumptions Under a Federal Statute.** A signature, document, or anything else that a federal statute declares to be presumptively or prima facie genuine or authentic.
- (11) **Certified Domestic Records of a Regularly Conducted Activity.** The original or a copy of a domestic record that meets the requirements of Rule 803(6)(A)-(C), as shown by a certification of the custodian or another qualified person that must be

signed in a manner that, if falsely made, would subject the signer to criminal penalty under the laws where the certification was signed. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record — and must make the record and certification available for inspection — so that the party has a fair opportunity to challenge them.

- (12) Certified Foreign Records of a Regularly Conducted Activity.** The original or a copy of a foreign record that meets the requirements of Rule 803(6)(A)-(C), as shown by a certification of the custodian or another qualified person that must be signed in a manner that, if falsely made, would subject the signer to criminal penalty under the laws where the certification was signed. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record — and must make the record and certification available for inspection — so that the party has a fair opportunity to challenge them.

Rule 903. Subscribing Witness's Testimony

A subscribing witness's testimony is necessary to authenticate a writing only if required by the law of the jurisdiction that governs its validity.

ARTICLE X. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

Rule 1001. Definitions That Apply to This Article

In this article:

- (a) A “writing” consists of letters, words, numbers, or their equivalent set down in any form.
- (b) A “recording” consists of letters, words, numbers, or their equivalent recorded in any manner.
- (c) A “photograph” means a photographic image or its equivalent stored in any form.
- (d) An “original” of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, “original” means any printout — or other output readable by sight — if it accurately reflects the information. An “original” of a photograph includes the negative or a print from it.
- (e) A “duplicate” means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.

Rule 1002. Requirement of the Original

An original writing, recording, or photograph is required in order to prove its content, except as otherwise provided in these rules or by other rules adopted by the Supreme Court of this State or by statute.

Rule 1003. Admissibility of Duplicates

A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate.

Rule 1004. Admissibility of Other Evidence of Content

An original is not required and other evidence of the content of a writing, recording, or photograph is admissible if:

- (a) all the originals are lost or destroyed, and not by the proponent acting in bad faith;
- (b) an original cannot be obtained by any available judicial process;
- (c) the party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or
- (d) the writing, recording, or photograph is not closely related to a controlling issue.

Rule 1005. Copies of Public Records to Prove Content

The proponent may use a copy to prove the content of an official record — or of a document that was recorded or filed in a public office as authorized by law — if these conditions are met: the record or document is otherwise admissible; and the copy is certified as correct in accordance with Rule 902(4) or is testified to be correct by a witness who has compared it with the original. If no such copy can be obtained by reasonable diligence, then the proponent may use other evidence to prove the content.

Rule 1006. Summaries to Prove Content

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time or place. And the court may order the proponent to produce them in court.

Rule 1007. Testimony or Statement of a Party to Prove Content

The proponent may prove the content of a writing, recording, or photograph by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for the original.

Rule 1008. Functions of the Court and Jury

Ordinarily, the court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under Rule 1004 or 1005. But in a jury trial, the jury determines — in accordance with Rule 104(b) — any issue about whether:

- (a) an asserted writing, recording, or photograph ever existed;
- (b) another one produced at the trial or hearing is the original; or
- (c) other evidence of content accurately reflects the content.

ARTICLE XI. MISCELLANEOUS RULES

Rule 1101. Applicability of Rules

- (a) **Proceedings Generally.** These rules apply to all actions and proceedings in the courts of this state except as otherwise provided in Subdivisions (c) and (d). They apply generally to civil actions and proceedings, criminal cases and contempt proceedings except those in which the court may act summarily.
- (b) **Rule of Privilege.** The rule with respect to privileges applies at all stages of all actions, cases and proceedings.
- (c) **Rules Inapplicable.** The rules (other than with respect to privileges) do not apply in the following situations:
 - (1) **Preliminary Questions of Fact.** The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under rule 104.
 - (2) **Grand Jury.** Proceedings before grand juries.
 - (3) **Miscellaneous Proceedings.** Proceedings for extradition or rendition; preliminary examinations in criminal cases; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; and proceedings with respect to release on bail or otherwise.
- (d) **Reliable Hearsay in Criminal Preliminary Examinations.** In a criminal preliminary examination, reliable hearsay shall be admissible as provided under Rule 1102.

Rule 1102. Reliable Hearsay in Criminal Preliminary Examinations

- (a) **Statement of the Rule.** Reliable hearsay is admissible at criminal preliminary examinations.
- (b) **Definition of Reliable Hearsay.** For purposes of criminal preliminary examinations only, reliable hearsay includes:
- (1) hearsay evidence admissible at trial under the Utah Rules of Evidence;
 - (2) hearsay evidence admissible at trial under Rule 804 of the Utah Rules of Evidence, regardless of the availability of the declarant at the preliminary examination;
 - (3) evidence establishing the foundation for or the authenticity of any exhibit;
 - (4) scientific, laboratory, or forensic reports and records;
 - (5) medical and autopsy reports and records;
 - (6) a statement of a non-testifying peace officer to a testifying peace officer;
 - (7) a statement made by a child victim of physical abuse or a sexual offense which is promptly reported by the child victim and recorded in accordance with Rule 15.5 of the Utah Rules of Criminal Procedure;
 - (8) a statement of a declarant that is written, recorded, or transcribed verbatim which is:

- (A) under oath or affirmation; or
 - (B) pursuant to a notification to the declarant that a false statement made therein is punishable; and
 - (9) other hearsay evidence with similar indicia of reliability, regardless of admissibility at trial under Rules 803 and 804 of the Utah Rules of Evidence.
- (c) **Continuance for Production of Additional Evidence.** If hearsay evidence is proffered or admitted in the preliminary examination, a continuance of the hearing may be granted for the purpose of furnishing additional evidence if:
- (1) The magistrate finds that the hearsay evidence proffered or admitted is not sufficient and additional evidence is necessary for a bindover; or
 - (2) The defense establishes that it would be so substantially and unfairly disadvantaged by the use of the hearsay evidence as to outweigh the interests of the declarant and the efficient administration of justice.

Rule 1103. Title

These rules may be known and cited as the Utah Rules of Evidence.